

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

CARON NAZARIO,

Plaintiff,

v.

JOE GUTIERREZ, et al.,

Defendants.

Civil Action No. 2:21-cv-00169-RCY-LRL

**DEFENDANT GUTIERREZ’S OBJECTIONS
TO PLAINTIFF’S REVISED DEPOSITION DESIGNATIONS**

COMES NOW Defendant Joe Gutierrez, by and through undersigned counsel, and states as follows as his objections to Plaintiff’s Revised Deposition Designations:

1. Deposition of Joe Gutierrez - Defendant Gutierrez objects to Plaintiff’s designation of any testimony that was not previously designated in accordance with the Court’s Scheduling Order. Defendant Gutierrez objects to the revised designated testimony as follows:

| Plaintiff’s Designated Testimony | Objection | Defendant Gutierrez’s Counter-Designations |
|---|--|---|
| 11:2-4 | | 11:5 |
| 16:24-17:1 | Counsel testifying | |
| 26:14 | Incomplete | |
| 27:11-14; 24:25 - 28:24 | FRE 402 - Lack of relevance; this incident occurred in Windsor, not Isle of Wight. FRE 403 - Will lead to jury confusion. | |
| 33:11-14 | FRE 402 - Lack of relevance; the incident occurred in Windsor, not Isle of Wight. FRE 403 - Will lead to jury | |

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| | <p>confusion.</p> <p>FRE 404 - Use of prior bad act to show conformity with conduct on December 5, 2020. The exceptions under 404 (b)(2) are not applicable, as there is no asserted affirmative defense that makes these exceptions applicable.</p> | |
| 33:6-14 | <p>FRE 402 - Lack of relevance; the incident occurred in Windsor, not Isle of Wight.</p> <p>FRE 403 - Will lead to jury confusion.</p> <p>FRE 404 - Use of prior bad act to show conformity with conduct on December 5, 2020. The exceptions under 404 (b)(2) are not applicable, as there is no asserted affirmative defense that makes these exceptions applicable.</p> | |
| 33:24-34:9 | <p>FRE 402 - Lack of relevance; the incident occurred in Windsor, not Isle of Wight.</p> <p>FRE 403 - Will lead to jury confusion due to unrelated incident in different jurisdiction, different events, and different set of circumstances.</p> | |
| 35:2-15 | <p>FRE 402 - Lack of relevance; the incident occurred in Windsor, not Isle of Wight.</p> <p>FRE 403 - Will lead to jury confusion due to unrelated incident in different jurisdiction, different events, and different set of circumstances.</p> <p>Will lead to trial within a trial of different events, different circumstances, and different witnesses.</p> <p>FRE 404 - Use of prior bad act to</p> | |

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| | show conformity with conduct on December 5, 2020. The exceptions under 404 (b)(2) are not applicable, as there is no asserted affirmative defense that makes these exceptions applicable. | |
| 36:9 - 38:24 | <p>FRE 402 - Lack of relevance; the incident occurred in Windsor, not Isle of Wight.</p> <p>FRE 403 - Will lead to jury confusion due to unrelated incident in different jurisdiction, different events, and different set of circumstances.</p> <p>Will lead to trial within a trial of different events, different circumstances, and different witnesses.</p> <p>FRE 404 - Use of prior bad act to show conformity with conduct on December 5, 2020. The exceptions under 404 (b)(2) are not applicable, as there is no asserted affirmative defense that makes these exceptions applicable.</p> <p>FRE 802 and 805 - Inadmissible hearsay.</p> | |
| 38:25-39:2; 39:10 - 40:23 | <p>FRE 402 - Lack of relevance; the incident occurred in Windsor, not Isle of Wight.</p> <p>FRE 403 - Will lead to jury confusion due to unrelated incident in different jurisdiction, different events, and different set of circumstances.</p> <p>Will lead to trial within a trial of different events, different circumstances, and different witnesses.</p> <p>FRE 404 - Use of prior bad act to show conformity with conduct on December 5, 2020. The exceptions under 404 (b)(2) are not applicable,</p> | |

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| | <p>as there is no asserted affirmative defense that makes these exceptions applicable.</p> <p>FRE 802 and 805 - Inadmissible hearsay.</p> | |
| 51:20-53:17; 53:21-54:16 | <p>FRE 402 - Lack of relevance; the incident occurred in Windsor, not Isle of Wight.</p> <p>FRE 403 - Will lead to jury confusion due to unrelated incident in different jurisdiction, different events, and different set of circumstances.</p> <p>Will lead to trial within a trial of different events, different circumstances, and different witnesses.</p> <p>FRE 404 - Use of prior bad act to show conformity with conduct on December 5, 2020. The exceptions under 404 (b)(2) are not applicable, as there is no asserted affirmative defense that makes these exceptions applicable.</p> <p>FRE 802 and 805 - Inadmissible hearsay.</p> <p>FRE 807- Plaintiff is attempting to use subsequent remedial measures in an unrelated matter from an unrelated jurisdiction to prove culpable conduct.</p> <p>FRE 403 - Unduly prejudicial to defendant Gutierrez.</p> | |
| 55:7-56:1 | <p>FRE 402 - Lack of relevance; the incident occurred in Windsor, not Isle of Wight, will lead to jury confusion due to unrelated incident in different jurisdiction, different events, and different set of circumstances.</p> <p>Will lead to trial within a trial of different events, different circumstances, and different</p> | |

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| | <p>witnesses.</p> <p>FRE 404 - Use of prior bad act to show conformity with conduct on December 5, 2020. The exceptions under 404 (b)(2) are not applicable, as there is no asserted affirmative defense that makes these exceptions applicable</p> <p>FRE 802 and 805 - Inadmissible hearsay.</p> <p>FRE 807 - Plaintiff is attempting to use subsequent remedial measures in an unrelated matter from an unrelated jurisdiction to prove culpable conduct.</p> <p>FRE 403 - Unduly prejudicial to Defendant Gutierrez.</p> | |
| 57:16-19 | <p>FRE 402 - Lack of relevance. The issues to be proven at trial are not violations of private policies of the Windsor Police Department but whether Defendants violated the plaintiff's constitutional rights and whether defendants used reasonable force or excessive force during the traffic stop on December 5, 2020.</p> | |
| 58:25-59:12 | <p>FRE 402 - Lack of relevance. The issues to be proven at trial are not violations of private policies of the Windsor Police Department but whether Defendants violated the plaintiff's constitutional rights and whether defendants used reasonable force or excessive force during the traffic stop on December 5, 2020.</p> | |
| 63:2-13 | <p>FRE 402 - Lack of relevance. The issues to be proven at trial are not violations of private policies of the Windsor Police Department but whether Defendants violated the plaintiff's constitutional rights and whether defendants used reasonable</p> | |

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| | <p>force or excessive force during the traffic stop on December 5, 2020.</p> <p>FRE 403 - Will lead to jury confusion.</p> | |
| 65:21 - 67:13 | <p>FRE 402 - Lack of relevance. The issues to be proven at trial are not violations of private policies of the Windsor Police Department but whether Defendants violated the plaintiff's constitutional rights and whether defendants used reasonable force or excessive force during the traffic stop on December 5, 2020.</p> <p>FRE 403 - Will lead to jury confusion.</p> | |
| 65:14-17 | <p>FRE 402 - Lack of relevance. The issues to be proven at trial are not violations of private policies of the Windsor Police Department but whether Defendants violated the plaintiff's constitutional rights and whether defendants used reasonable force or excessive force during the traffic stop on December 5, 2020.</p> <p>FRE 403 - Will lead to jury confusion.</p> | |
| 118:16-18; 118:23-120:21; 120:23-121:4; 121:6-124:20; 124:22; 125:5-129:6; 129:18-133:4 | <p>FRE 402 - Lack of relevance.</p> <p>FRE 802 and 805 - Inadmissible hearsay.</p> <p>FRE 807 - Plaintiff is attempting to use subsequent remedial measures in an unrelated matter from an unrelated jurisdiction to prove culpable conduct.</p> <p>FRE 403 - Unduly prejudicial to Defendant Gutierrez.</p> | |
| 136:4-136:20 | <p>FRE 402 - Lack of relevance. The issues to be proven at trial are not violations of private policies of the Windsor Police Department but</p> | |

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| | <p>whether Defendants violated the plaintiff's constitutional rights and whether defendants used reasonable force or excessive force during the traffic stop on December 5, 2020.</p> <p>FRE 403 - Will lead to jury confusion.</p> <p>This conversation occurred after traffic stop ended.</p> | |
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2. Deposition of Daniel Crocker - Defendant Gutierrez incorporates by reference his objections to Plaintiff's designated testimony of the Deposition of Daniel Crocker as set forth in the Joint Memorandum of Unresolved Objections (Dkt. 193). Defendant Gutierrez objects to Plaintiff's designation of any testimony that was not previously designated in accordance with the Court's Scheduling Order. Defendant Gutierrez objects to the designated testimony as follows:

| Plaintiff's Designated Testimony | Objection | Defendant Gutierrez's Counter-Designations |
|---|--|---|
| 12:8-9 | FRE 402 - Lack of relevance. Not timely designated. | |
| 14:2-16:13 | FRE 402 - Lack of relevance. | |
| 23:19-25; 24:1-25 | FRE 402 - Lack of relevance. 24:22-25 not timely designated. | |
| 27:9-24 | FRE 402 - Lack of relevance. 27:9, 27:22-24 not timely designated. | |
| 29:10-19 | FRE 402 - Lack of relevance. | |
| 31:20-33:19; 33:21- 35:20; 37:2- 39:22 | FRE 402 - Lack of relevance. 34:20-25, 35:10-20, 39:10-19 not timely designated. | |
| 42:21 - 43:12; 43:17- 46:22; 47:3 - 48:3; 49:6- 50:23 | 42:21-22, 43:7-12, 50:19-23 not timely designated. | |

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| 87:10-12 | FRE 402 - Lack of relevance. | |
| 59:5-60:1 | FRE 402 - Lack of relevance (59:5-59:23). 59:23-60:1 not timely designated. | |
| 111:19- 112:2; 112:5; 112:7; 112:10; 112:12- 14; 112:19 | FRE 402 - Lack of relevance (111:19- 112:7). | |
| 63:19-23; 64:5-19; 65:6; 65:10- 19 | 64:5-19, 65:6, 65:10-19 not timely designated. | |
| 68:16-19; 69:2-19; 69:21 | 68:16-19 not timely designated. | |
| 71:2-23; 72:14-73:4; 73:25; 74:1- 12; 75:10 | FRE 402 - Lack of relevance (72:20-73:4; 73:25; 74:1-2; 75:10). | |
| 51:3-12 | FRE 402 - Lack of relevance. | |
| 76:9-77:2 | Not timely designated. | |
| 82:21-24 | FRE 402 - Lack of relevance. | |
| 144:11-22 | FRE 402 - Lack of relevance. | 143:19-24 |

Respectfully Submitted,

JOE GUTIERREZ

/s/ Jessica A. Swauger

John B. Mumford, Jr. (VSB No. 38764)

Coreen A. Silverman (VSB No. 43873)

Jessica A. Swauger (VSB No. 89612)

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Counsel for Defendant Joe Gutierrez

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January 2023, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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| Jonathan M. Arthur, Esq. (VSB No. 86323) Thomas H. Roberts, Esq. (VSB No. 26014) Andrew T. Bodoh, Esq. (VSB No. 80143) THOMAS H. ROBERTS & ASSOCIATES, P.C. 105 South 1st Street Richmond, Virginia 23219 Telephone: (804) 783-2000 Facsimile: (804) 783-2105 j.arthur@robertslaw.org tom.roberts@robertslaw.org andrew.bodoh@robertslaw.org <i>Counsel for Plaintiff Caron Nazario</i> | Robert L. Samuel, Jr. (VSB No. 18605) Richard H. Matthews (VSB No. 16318) Anne C. Lahren (VSB No. 73125) Bryan S. Peeples (VSB No. 93709) PENDER & COWARD 222 Central Park Avenue, Suite 400 Virginia Beach, Virginia 23462 Telephone: (757) 490-6293 Facsimile: (757) 502-7370 rsamuel@pendercoward.com rmatthew@pendercoward.com alahren@pendercoward.com bpeeples@pendercoward.com <i>Counsel for Defendant Daniel Crocker</i> |
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